

**STATE OF CALIFORNIA
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY
DEPARTMENT OF RESOURCES RECYCLING AND RECOVERY**

In the Matter of:)	Tracking No: CO 017-005
)	
)	
Unincorporated County of Merced)	COMPLIANCE ORDER
)	
)	
Jurisdiction)	Public Resources Code Section 41825

INTRODUCTION

- 1.1 Parties: The Department of Resources Recycling and Recovery (Department) issues this Compliance Order (Order) to the Unincorporated County of Merced (Merced-Unincorporated).
- 1.2 Authority: Section 42649.3(g) of the Public Resources Code (PRC) requires the Department to review implementation of each Jurisdiction's recycling of commercial solid waste program (henceforth referred to as Mandatory Commercial Recycling (MCR) program), at least once every two or four years, depending on certain specified criteria. This Jurisdiction Review is the Department's independent evaluation of a Jurisdiction's progress in implementing its MCR program(s) and complying with the requirements of PRC Section 42649 et sec. If a Jurisdiction is not meeting the mandates of the MCR law, the Department may issue a Compliance Order and schedule (PRC Section 41825). Fines of up to \$10,000 per day may be levied if the provisions of the compliance order and schedule are not met (PRC Section 41850).

DETERMINATION OF COMPLIANCE DEFICIENCIES

- 2.1 Department staff conducted a Jurisdiction Review of Merced-Unincorporated's MCR Programs. After considering the results of this review and the adoption of this Order at a public hearing commencing on December 11, 2017, the Department determines that:
- 2.2 Merced-Unincorporated failed to comply with PRC Section 42649.3 and CCR section 18838 in that it failed to adequately implement programs or activities that target significant portions of Merced-Unincorporated's commercial waste stream, and did not make all reasonable and feasible efforts to implement its selected commercial diversion programs or activities in accordance with PRC Section 42649.3(i).
- 2.3 Staff notified Merced-Unincorporated by mail on March 30, 2017 in order to confer with Merced-Unincorporated regarding this Compliance Order because Department staff's 2012-2015 Jurisdiction Review indicated that Merced-Unincorporated has not implemented, or is not making a good faith effort to implement, a commercial recycling program, and Merced-Unincorporated did not meet the requirements of PRC Section 42649-42649.7. In addition, a 30-Day Notice of Intent to issue a Compliance Order was mailed to Merced-Unincorporated on November 8, 2017, in accordance with PRC Section 41825.

SCHEDULE FOR COMPLIANCE

- 3.1 Based on the foregoing determination of compliance deficiencies, it is hereby ordered that:
- a. Merced-Unincorporated shall work with Department staff to determine gaps in program areas and develop a Local Implementation Plan (LIP), which includes those conditions necessary for Merced-Unincorporated to achieve compliance and improve, expand, or implement new diversion programs.
 - b. Merced-Unincorporated shall develop and submit to the Department a fully executed LIP by February 28, 2018.
 - c. Merced-Unincorporated will fully implement the programs identified in the LIP by July 31, 2018.
 - d. Department staff will monitor Merced-Unincorporated's continued implementation of the programs identified in the LIP from August 1, 2018 through January 31, 2019 ("the oversight period").
 - e. Merced-Unincorporated will submit quarterly status reports based on the calendar year. These reports shall use the Department's electronic, quarterly reporting format. The quarterly status reports are to be used to document the status and work completed for each of the identified tasks in the LIP. For each task in the LIP, Merced-Unincorporated will explain the status of the task, specifying what actions have been taken to complete the task. If the work has fallen behind schedule or has not been completed, Merced-Unincorporated will explain the reason(s) for the delay/incompletion. Merced-Unincorporated will also attach any required reports, using additional sheets as necessary for the report.

- f. At any time prior to the conclusion of the oversight period, if the Department staff determines that Merced-Unincorporated has failed to make a good faith effort to implement the programs identified in the LIP, the Department may immediately notice a public hearing pursuant to PRC Section 41850, to determine whether or not to impose administrative civil penalties against Merced-Unincorporated of up to \$10,000 per day.
- 3.2 Penalties: At the end of the oversight period, Department staff will meet with Merced-Unincorporated to assess Merced-Unincorporated's implementation efforts relating to its LIP; then the Department shall hold a public hearing to determine whether or not Merced-Unincorporated has complied with all sections of this Compliance Order. Failure to implement programs and/or comply with all sections of the Compliance Order at any time may result in fines of up to (\$10,000) per day in accordance with PRC Section 41850(a). In addition, the Department has discretion to notice a hearing at any time upon staff's recommendation that Merced-Unincorporated has completed the conditions of the Compliance Order.
- 3.3 Submittals: Quarterly status reports and Annual Report documents are required to be submitted electronically (via e-mail/e-filing). However, the Jurisdiction Compliance Unit will consider requests to submit hard copies if notified in writing of why Merced-Unincorporated is unable to submit all or some documents electronically. Excluding the quarterly status reports and the Annual Report documents, all other documents may be submitted electronically or via hard copy. All hard copy mail shall be sent to the following:

**Jurisdiction Compliance Unit
Department of Resources Recycling and Recovery
1001 I Street
P.O. Box 4025 Sacramento, CA 95812
Mail Stop: 10A-16
Attn: Compliance Order Correspondence
Tracking No: CO 017-005**

- 3.4 Communications: The Department or its designee will communicate all approvals and decisions of the Department made regarding the adequacy of submittals to Merced-Unincorporated in writing. No informal advice, guidance, suggestions, or comments by the Department's staff regarding reports, plans, schedules, or any other documents submitted by Merced-Unincorporated shall be considered to be Department approvals.
- 3.5 Department Review and Approval: If the Department determines that any report, plan, schedule, or other document submitted for approval pursuant to this Compliance Order fails to comply with the Compliance Order or fails to achieve successful implementation of the MCR program, the Department or its designee may:
- a. Return the document to Merced-Unincorporated with recommended changes and a date by which Merced-Unincorporated must submit to the Department the document incorporating the recommended changes, or
 - b. Serve a notice that the Department will hold a public hearing to consider the imposition of penalties in accordance with PRC Section 41850.
- 3.6 Compliance with Applicable Laws: Merced-Unincorporated shall carry out this Compliance Order in compliance with all Local, State, and Federal requirements, including but not limited to requirements to obtain necessary permits.

- 3.7 Liability: Nothing in this Compliance Order shall constitute or be construed as a satisfaction or release from liability for any conditions or claims arising as a result of past, current, or future operations of Merced-Unincorporated.
- 3.8 Government Liabilities: The State of California and the Department shall not be liable for injuries or damages to persons or property resulting from acts or omissions in carrying out activities pursuant to this Compliance Order, nor shall the State of California be held as a party to any contract entered into by Merced-Unincorporated or its agents in carrying out activities pursuant to the Compliance Order. Merced-Unincorporated shall indemnify, defend and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting in connection with the performance of this Compliance Order.
- 3.9 Extension Request: If Merced-Unincorporated determines that it will be unable to perform any activity or submit any document within the time required under this Compliance Order, Merced-Unincorporated may, as far in advance of the due date as possible, request an extension of time in writing. The extension request shall include a justification for the delay.
- 3.10 Extension Approvals: If the Department or its designee determines that good cause exists for an extension, it will grant the request and specify in writing a new compliance schedule.

- 3.11 Parties Bound: This Order shall apply to and be binding upon Merced-Unincorporated and upon the Department and any successor agency (regional agency, etc.) that may have responsibility for, and the authority over, the subject matter of this Compliance Order.

EFFECTIVE DATE

- 4.1. This Compliance Order is final and effective from the date of issuance.

Date of Issuance_____

Mark De Bie, Deputy Director
Waste Permitting, Compliance and Mitigation Division
Department of Resources Recycling and Recovery